

# EXHIBIT 1

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

TEMUJIN KENSU, INDIVIDUALLY  
AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED,

*Plaintiff,*

v.

Case No. 2:18-cv-11086-SFC-PTM

JPAY INC.,

Hon. Sean F. Cox

Mag. Judge Patricia T. Morris

*Defendant.*

---

**DECLARATION OF ATINUKE SODE IN SUPPORT OF DEFENDANTS'  
MOTION TO DISMISS PURSUANT TO RULE 12(B)(6)**

I, ATINUKE SODE, hereby certify pursuant to 28 U.S.C. § 1746 that the factual statements set forth below are true and correct to the best of my knowledge, information, and belief:

1. I am currently employed as a paralegal at JPay, Inc (“JPay”). I have personal knowledge of the facts set forth herein and if called and sworn as a witness, I could and would competently testify thereto.

2. In my role at JPay, I am familiar with JPay’s Terms of Use, alternatively titled Terms of Service and Warranty Policy (the “TOU”), the process for distributing the TOU to JPay customers, the process for accepting the TOU, the services offered by JPay to inmates in the custody of the Michigan Department of

Corrections (“MDOC”) at times relevant to this action, and have access to JPay’s customer records.

3. A true and correct copy of JPay’s TOU, as effective January 30, 2016, is attached as Exhibit A.

4. A true and correct copy of JPay’s TOU, as effective January 17, 2017, is attached as Exhibit B.

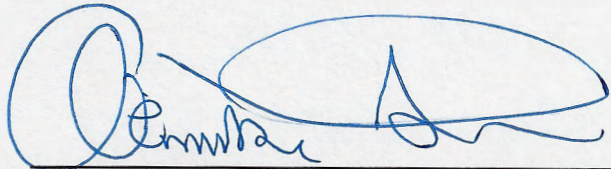
5. A true and correct copy of JPay’s TOU, as effective February 21, 2018, is attached as Exhibit C.

6. JPay’s TOU is provided to MDOC inmates on-screen, through JPay’s inmate kiosks. Prior to being able to use JPay’s media services, customers are required to create and register an account through JPay’s inmate kiosks. During the registration process, customers are presented with the TOU for their review. In order for the registration process to be completed, customers must review the TOU and select a button labeled “I AGREE” to advance any further. If a customer declines to accept the TOU, the customer will not be able to complete their registration, nor will the customer have access to JPay’s media services. In the event that JPay makes any change to its TOU, customers must once again agree to the TOU through the inmate kiosks in order to continue using JPay’s media services.

7. When a revised TOU is issued, JPay customers who access JPay's services on or after the effective date are required to accept JPay's revised TOU prior to making additional purchases from JPay.

8. I declare to the best of my knowledge under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on June 1, 2018.

  
\_\_\_\_\_  
Atinuke Sode

# Exhibit A

Kiosk Terms of use Notepad.html

<html><b>TERMS OF USE</b><br>

BEFORE YOU USE THE JPAY KIOSK OR YOUR JPAY PLAYER AND THE SERVICES PROVIDED THEREUNDER, YOU MUST READ AND AGREE TO THESE TERMS OF USE. IF YOU CANNOT READ OR UNDERSTAND THESE TERMS OF USE, PLEASE CONTACT CORRECTIONAL STAFF FOR FURTHER EXPLANATION AND CLARIFICATION.<br>

BY CLICKING THE "I AGREE" BUTTON, YOU ARE INDICATING THAT YOU CONSENT TO THIS AGREEMENT.<br>

1. <b>USE OF THE KIOSK, YOUR JPAY PLAYER AND RELATED SERVICES.</b> Your use of the JPay Kiosk ("Kiosk") is a privilege. Misuse of the Kiosk or causing damage to the Kiosk may lead to denial of this privilege, administrative and disciplinary sanctions, and/or legal action against you.<br>

These terms of use apply to all the services that may be accessed by you through the Kiosk or your JP3, JP4, JP5 or JP5 Mini Player (each of which shall hereinafter be referred to as a "Player"). These services may include email, video visitation, VideoGrams, eCards, music, games, eBooks and / or educational materials (each a "Service" and collectively, the "Services"). Each correctional facility shall determine which Services shall be made available, in addition to the procedures and guidelines that govern the use of the Services.<br>

You are permitted to use only those Services that you are authorized to use under the jurisdictional administrative regulations applicable to you. PLEASE BE ADVISED THAT ALL CORRESPONDENCE AND COMMUNICATIONS BETWEEN YOU AND OTHERS IN CONNECTION WITH YOUR USE OF THE SERVICES ARE SUBJECT TO MONITORING, RECORDING, INTERCEPTION AND DISCLOSURE, AND ARE NOT PROTECTED BY ATTORNEY-CLIENT PRIVILEGE.<br>

2. <b>FEES AND REFUNDS.</b> Fees that are charged to you for certain of the Services may include the suggested retail price for the Service, as well as additional fees to cover infrastructure and network costs incurred by JPay in connection with the provision of these Services. You may also be charged sales tax, where required. Depending on your facility's administrative regulations, refunds or credits may be provided to you for certain of the Services, as described below. Funds in your JPay Media Account are non-refundable and non-transferable. The availability and prices of the Services are subject to change without notice.<br>

3. <b>JPAY PLAYERS AND CONTENT.</b> All Player purchases are non-refundable. By purchasing a Player, you agree to the Player's Limited Warranty, which is included on the JPay website or in the Kiosk's frequently asked questions ("FAQs"), depending on how the Player was purchased. If you have an issue with your Player during the warranty period, you must submit a trouble ticket to the Kiosk's help desk.<br>

"Content" includes games, music, software, technology, text, books, sound, graphics, pictures, video, code, and all audio visual or other material appearing on or emanating to and/or from the Kiosk and / or Player. JPay does not guarantee the

Kiosk Terms of use Notepad.html

accuracy or reliability of the Content or that it is error-free. You understand that you may be exposed to Content that may be deemed offensive, indecent or objectionable. You agree to use the Content at your sole risk and that JPay shall have no liability to you for Content found to be offensive, indecent or objectionable.<br>

JPay may change Content options without notice. On occasion, purchased Content may become unavailable prior to download and previously purchased Content may be removed from your player. In such cases, JPay will issue you a credit, which may be used for a future purchase.<br>

The Content is provided for your personal, non-commercial entertainment use. All Content embodies the intellectual property of a third party and is protected by law. You agree not to modify, or attempt to modify, any Content for any reason whatsoever, unless expressly authorized or stated within the applicable legal notices. Content and all other intellectual property rights in or to the Content are owned by JPay or JPay's third party licensors and is protected by United States and international copyright, trade dress, patent, and trademark laws, international conventions, and other laws protecting intellectual property and related proprietary rights. In addition, unless expressly authorized by JPay or stated in the applicable legal notices, you may not distribute, publicly perform or display, lease, sell, transmit, transfer, publish, edit, copy, create derivative works from, rent, sub-license, decompile, disassemble, reverse engineer or otherwise make unauthorized use of the Content.<br>

THE KIOSK, PLAYER AND SERVICES ARE PROVIDED BY JPAY INC. ON AN "AS IS" AND "AS AVAILABLE" BASIS. JPAY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE KIOSK, PLAYER OR SERVICES. YOU EXPRESSLY AGREE THAT YOUR USE OF THE KIOSK, PLAYER AND SERVICES IS AT YOUR SOLE RISK.<br>

TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, JPAY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. JPAY (AS WELL AS ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES AND STOCKHOLDERS) WILL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM THE USE OF THE KIOSK, A PLAYER AND / OR THE SERVICES, ANY NON-TRANSMITTAL OF A COMMUNICATION, OR FOR DELAY OR ERRONEOUS DELIVERY OF A COMMUNICATION, REGARDLESS OF THE CAUSE, INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL, PUNITIVE AND CONSEQUENTIAL DAMAGES.<br>

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.<br>

4. <b>GOVERNING LAW.</b> This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Florida, exclusive of conflict or choice of law rules.<br>

Kiosk Terms of use Notepad.html

5. **DISPUTE RESOLUTION.**

- a) Any dispute, claim or controversy among the parties arising out of or relating to this Agreement ("Dispute") shall be finally resolved by and through binding arbitration administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules (the "JAMS Rules"), provided that failure to adhere to any of the time limits set forth therein shall not be a basis for challenging the award. Both the foregoing agreement of the parties to arbitrate any and all Disputes, and the results, determinations, findings, judgments and/or awards rendered through any such arbitration, shall be final and binding on the parties and may be specifically enforced by legal proceedings in any court of competent jurisdiction.
- b) The arbitration shall be conducted by three arbitrators. Each party shall select one arbitrator within 30 days of commencement of the arbitration, failing which, upon request of any party, JAMS shall appoint such arbitrator. The third arbitrator, who shall serve as Chairperson of the arbitral panel, shall be appointed by JAMS pursuant to Rule 15 of the JAMS Rules. The arbitrators must apply the terms of this arbitration agreement, including without limitation, the waiver of class-wide arbitration set forth below.
- c) The place of arbitration shall be Miami, Florida (provisions will be made for telephonic appearances if necessary or required). If arbitration in Miami, Florida is contrary to law, the arbitration shall be conducted in the city of your incarceration.
- d) The cost of the arbitration proceeding, including, without limitation, each party's attorneys' fees and costs, shall be borne by the unsuccessful party or, at the discretion of the arbitrators, may be prorated between the parties in such proportion as the arbitrators determine to be equitable and shall be awarded as part of the award.
- e) The arbitration provisions set forth herein, and any arbitration conducted thereunder, shall be governed exclusively by the Federal Arbitration Act, Title 9 United States Code, to the exclusion of any state or municipal law of arbitration.
- f) **RESTRICTIONS ON ARBITRATION: ALL DISPUTES, REGARDLESS OF THE DATE OF ACCRUAL OF SUCH DISPUTE, SHALL BE ARBITRATED ON AN INDIVIDUAL BASIS. YOU ARE WAIVING YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT, AND TO CERTAIN DISCOVERY AND OTHER PROCEDURES THAT ARE AVAILABLE IN A LAWSUIT. YOU AND JPAY AGREE THAT THE ARBITRATORS HAVE NO AUTHORITY TO ORDER CONSOLIDATION OR CLASS ARBITRATION OR TO CONDUCT CLASS-WIDE ARBITRATION PROCEEDINGS, AND ARE ONLY AUTHORIZED TO RESOLVE THE INDIVIDUAL DISPUTES BETWEEN YOU AND JPAY ALONE. FURTHER, YOU WILL NOT HAVE THE RIGHT TO CONSOLIDATION OR JOINDER OF INDIVIDUAL DISPUTES OR ARBITRATIONS, TO HAVE ANY DISPUTE ARBITRATED ON A CLASS ACTION BASIS, OR TO PARTICIPATE IN A REPRESENTATIVE CAPACITY OR AS A MEMBER OF ANY CLASS PERTAINING TO ANY CLAIM SUBJECT TO ARBITRATION.**

Kiosk Terms of use Notepad.html

g) THE VALIDITY, EFFECT, AND ENFORCEABILITY OF THE FOREGOING WAIVER OF CLASS ACTION LAWSUIT AND CLASS-WIDE ARBITRATION, IF CHALLENGED, ARE TO BE DETERMINED SOLEY AND EXCLUSIVELY BY FEDERAL DISTRICT COURT LOCATED IN THE SOUTHERN DISTRICT OF FLORIDA OR FLORIDA STATE COURT IN MIAMI-DADE COUNTY AND NOT BY JAMS OR ANY ARBITRATOR.<br>

h) WITHOUT WAIVING THE RIGHT TO APPEAL SUCH DECISION, SHOULD ANY PORTION OF SECTION 5(F) BE STRICKEN FROM THIS AGREEMENT OR DEEMED OTHERWISE INVALID OR UNENFORCEABLE, THEN THIS ENTIRE SECTION 5 (OTHER THAN THIS SENTENCE) SHALL BE STRICKEN FROM THIS AGREEMENT AND INAPPLICABLE, AND ANY AND ALL DISPUTES SHALL PROCEED IN FEDERAL DISTRICT COURT LOCATED IN THE SOUTHERN DISTRICT OF FLORIDA OR FLORIDA STATE COURT IN MIAMI-DADE COUNTY AND BE DECIDED BY A JUDGE, SITTING WITHOUT A JURY, ACCORDING TO APPLICABLE COURT RULES AND PROCEDURES, AND NOT AS A CLASS ACTION LAWSUIT.<br>

These terms of use may be modified by JPay at any time. You will be notified of any changes to these terms of use.

</html>

# Exhibit B

## TERMS OF SERVICE AND WARRANTY POLICY

**BEFORE YOU USE THE JPAY KIOSK OR YOUR JPAY PLAYER AND THE SERVICES PROVIDED THEREUNDER, YOU MUST READ AND AGREE TO THESE TERMS OF SERVICE AND WARRANTY POLICY (THE “AGREEMENT”). WE MAY AMEND THIS AGREEMENT AT ANY TIME. YOU AGREE TO BE BOUND BY THE CHANGED TERMS AND CONDITIONS OF THIS AGREEMENT UPON YOUR ACCEPTANCE. ANY RIGHTS NOT EXPRESSLY GRANTED HEREIN ARE RESERVED BY JPAY. IF YOU CANNOT READ OR UNDERSTAND THESE TERMS OF SERVICE AND WARRANTY POLICY, PLEASE CONTACT CORRECTIONAL STAFF FOR FURTHER EXPLANATION AND CLARIFICATION.**

**BY CLICKING THE “I AGREE” BUTTON, YOU ARE INDICATING THAT YOU CONSENT TO THIS AGREEMENT.**

- 1. USE OF THE KIOSK, YOUR JPAY PLAYER AND RELATED SERVICES.** Your use of the JPay Kiosk (“Kiosk”) is a privilege. Misusing or damaging the Kiosk may lead to denial of this privilege, administrative and disciplinary sanctions, and/or legal action against you.

These terms of service and warranty policy apply to all services you may access through the Kiosk or your JP3, JP4, JP5, JP5S, or JP5 Mini Player (each of which shall be referred to as a “Player”). These services include, but are not limited to, stamp purchases, email, VideoGrams, eCards, video visitation, phone account funding, music, games, video content, news, audio and eBooks, educational materials, and/or Player and Player accessory purchases (each a “Service” and collectively, the “Services”). Each correctional facility will determine which Services will be made available to you, in addition to the procedures and guidelines that govern the use of the Services.

You are permitted to use only those Services that you are authorized to use under the jurisdictional administrative regulations applicable to you. ALL EMAIL AND OTHER CORRESPONDENCE AND COMMUNICATIONS BETWEEN YOU AND OTHERS IN CONNECTION WITH YOUR USE OF THE SERVICES ARE SUBJECT TO MONITORING, RECORDING, INTERCEPTION AND DISCLOSURE, AND ARE NOT PROTECTED BY ATTORNEY-CLIENT PRIVILEGE. If an email is censored or deleted, any attachments to that email will also be removed from your account. Each email communication you send is subject to a character limit, and the number of emails which can be stored in your inbox are limited as well. Please check the Frequently Asked Questions (“FAQ”) for the limits applied to your facility.

- 2. FEES AND REFUNDS.** Fees charged to you for certain of the Services may include the suggested retail price for the Service, as well as additional fees to cover infrastructure and network costs incurred by JPay in connection with the provision of these Services. You may also be charged sales tax where required. Depending on your facility’s administrative regulations, refunds or credits may be provided to you for certain of the Services, as described below. You will not, however, be entitled to a refund due to your inability to access any of the Services as a result of any downtime experienced by the Kiosks, your Player, or any of the specific Services.

The transfer of funds to your JPay Media Account is a non-refundable transaction, and funds in such Media Account are not transferable. JPay may make a deduction from your Media Account because of a dispute, legal process, reversed deposit, fees, a correction to your account, or other similar reasons. If such a deduction is necessary, notification will be provided to you. The availability and prices for the Services are subject to change without notice.

If the facility in which you reside permits stamp purchases from your trust and / or JPay Media Accounts, such purchases may not be canceled, are non-refundable and any unused stamps will not be refunded. If the facility in which you reside permits debit phone time account funding from your trust account, such purchases may also not be canceled and are non-refundable.

3. **JPAY PLAYERS AND CONTENT.** All Player purchases are non-refundable. By purchasing a Player, you agree to the Player's Limited Warranty listed in the following section as well as the Kiosk's Frequently Asked Questions. If you have an issue with your Player during the warranty period, you must submit a trouble ticket to the JPay Help Desk on the Kiosk.

The Player will ship to the correctional facility at which you reside at the time of purchase within forty-five (45) business days from the date of purchase. Depending on your facility's own procedures, it may take additional time for the correctional facility staff to deliver the Player to you. JPay is not responsible for delays in delivery due to the actions or decisions of the correctional facility or events beyond JPay's control, including shortage of materials, labor strikes, transportation failure, lockdown, facility disruption, inclement weather or acts of God.

As used in this Agreement, "Content" includes content and components thereof purchased from JPay, including games, music, news, software, technology, text, books, sound, graphics, pictures, video, code, and all audiovisual or other material appearing on or transmitted to and/or from the Kiosk and/or Player. JPay does not guarantee the accuracy or reliability of the Content or that it is error-free. You understand that you may be exposed to Content that may be deemed offensive, indecent, or objectionable. You agree to use the Content at your sole risk and that JPay will have no liability to you for Content found to be offensive, indecent, or objectionable.

JPay may change Content options without notice. The download time or functionality of any of our Services may vary depending on the network and connectivity at your facility. On occasion, purchased Content may become unavailable prior to download and previously purchased and downloaded Content may be removed from your Player while you are a resident at the correctional facility. In such cases, JPay will issue you a credit, which may be used for a future purchase while you are a resident at a correctional facility in the state agency from which you purchased the Content. If JPay provides you with a replacement Player pursuant to the terms of the warranty or if you or a friend or family member purchase a new Player, previously downloaded news Content will not be accessible on the new Player.

The Content is provided for your personal, non-commercial entertainment use. During your incarceration, you may only access and view the Content and/or Services while you are a resident at a correctional facility in the state agency where you purchased such Content and/or Services.

All Content embodies the intellectual property of a third party and is protected by law. You agree not to modify, or attempt to modify, any Content for any reason whatsoever, unless expressly authorized or stated within the applicable legal notices. Content and all other intellectual property rights in or to the Content are owned by JPay or JPay's third party licensors and is protected by United States and international copyright, trade dress, patent, and trademark laws, international conventions, and other laws protecting intellectual property and related proprietary rights. In addition, unless expressly authorized by JPay or stated in the applicable legal notices, you shall not distribute, publicly perform or display, lease, sell, transmit, transfer, publish, edit, copy, create derivative works from, rent, sub-license, decompile, disassemble, reverse engineer, or otherwise make unauthorized use of the Content.

### ***After Your Release***

After your release from the correctional facility, you may have the security features removed from your Player ("unlocked") so that certain Content may be accessible to you outside of the correctional facility. This only applies to Players that were purchased by you or a friend or family member.

To have your Player unlocked, you must mail in the Player and include the following in the package:

- Player
- Your Inmate ID #
- Telephone Number
- Return Mailing Address

Please mail the Player package to:

JPay Inc.

ATTN: Inventory Department

12034 Miramar Parkway

Miramar, FL 33025

Upon receipt of the Player by JPay, if JPay determines the Player is functioning, games and music purchases downloaded on the device and music in your library at the time of your release will be made accessible to you through your unlocked Player. JPay will mail to you the unlocked Player containing those games and music and, if necessary, a USB drive containing music in your library. Any saved emails and their attachments will not be made available to you upon your release.

If JPay determines that the Player is not functioning, JPay will return to you the non-functioning Player along with a USB drive containing your music purchases only. Games and any saved emails and their attachments will not be included with the USB contents.

Please allow up to forty-five (45) business days for delivery of the unlocked Player or USB drive. After forty-five (45) business days, you may follow up on the status of your unlocked Player or USB drive by contacting JPay via email at [tabletunlocksupport@jpay.com](mailto:tabletunlocksupport@jpay.com).

***Movies, Television Shows, and Other Video Rentals***

In certain correctional facilities, JPay may make available for rental and viewing a selection of full-length movies, episodes of television shows, and other videos (collectively hereafter referred to as "Video Content"). This Video Content is available for a limited viewing period only and is not a permanent download. Beginning when you first rent the Video Content, it will be available on your Player for a period of thirty (30) days (the "rental period"). After the rental period ends, the Video Content will delete from your Player, whether or not you have viewed the Video Content. If you wish to view the Video Content after the rental period ends, you must rent it again. Within the thirty (30)-day rental period, when playback of the Video Content first begins you will have forty-eight (48) hours to view the content, after which the Video Content will delete from your Player. In this case, the Video Content will be listed as "Expired" with the option to rent it again (if it is still available for rent). Note that if you begin watching the Video Content on the last day of the thirty (30)-day rental period, you will only have until midnight that day to finish viewing, not the full forty-eight (48) hours.

This Video Content service is only available in the correctional facilities. Once you are released, JPay will no longer provide the rental service to you, even if you retain ownership of your Player.

**4. PLAYER LIMITED WARRANTY.** JPay warrants that the Player will be free from material defects in design and manufacture and will substantially conform to the published specifications under normal use for a period of ninety (90) days following the date on which you first connect the Player to the Kiosk. In certain states, the warranty period may be longer. Please check the FAQs for the warranty period applicable at your facility. This warranty is provided to you and is not transferable. The warranty is void if the product is not used in accordance with the product instructions, or if it is damaged as a result of misuse, unauthorized repair, modification or accident. JPay shall not be liable if a certain component, accessory, or feature is not available on the Player due to restrictions imposed by the applicable correctional facility.

To obtain warranty service, you must submit a Trouble Ticket to the JPay Help Desk on the Kiosk. JPay will attempt to troubleshoot the issue. If further assistance is needed, JPay will repair or replace the product or any portion thereof with a new or refurbished product of equal or greater capacity and functionality. A replacement Player assumes (i) the remaining warranty time available on the original Player (which is calculated from the date that you first submit a Trouble Ticket), or (ii) a warranty period of thirty (30) days following the date the replacement Player is delivered to the facility in which you reside, whichever date is later.

JPay will repair or replace any defective earbud headphones (that accompanied your Player) if you submit a Trouble Ticket within two (2) weeks of your receipt of the earbud headphones. If you are a resident of a correctional facility in the State of Idaho, however, you will have thirty (30) days to submit the Trouble Ticket regarding the defective earbud headphones.

If JPay determines that you qualify for a replacement Player or earbud headphones under our Return Merchandise Authorization (RMA) process, JPay will ship the replacement product to the correctional

facility at which you reside within forty-five (45) business days from the date the Trouble Ticket generating the RMA was submitted. Depending on your facility's own procedures, it may take additional time for the correctional facility staff to deliver the Player to you. JPay will not be responsible for delays in delivery due to the actions or decisions of the correctional facility or events beyond JPay's control, including shortage of materials, labor strikes, transportation failure, lockdown, facility disruption, inclement weather or acts of God.

JPay does not warrant, and shall not be responsible for, any lost Content or data contained in the Player regardless of the cause of the loss. JPay's products are not warranted to operate without failure. This warranty gives you specific legal rights, and you may also have other rights which vary by jurisdiction.

JPay is not responsible for damage to the Player arising from failure to follow instructions relating to the Player's use. This warranty does not apply to: (a) cosmetic damage, including but not limited to, scratches and dents; (b) damage caused by accident, abuse, misuse, liquid spill or submersion, flood, fire, earthquake, or other external causes; (c) damage caused by service on the Player performed by anyone who is not a JPay representative; (d) a Player that has been modified; or (e) a Player confiscated by correctional staff.

**5. PLAYER ACCESSORIES.** If the correctional facility in which you reside permits the purchase of accessories, including but not limited to, USB cables, barrel chargers, headphones and/or armbands (each an "Accessory" and collectively, the "Accessories"), such purchases are non-refundable. By purchasing an Accessory, you agree to the Accessory's Warranty listed in the following section as well as the Kiosk's Frequently Asked Questions. If you have an issue with your Accessory during the warranty period, you must submit a trouble ticket to the JPay Help Desk.

JPay will not be liable for any loss, destruction or damage to the Accessory. JPay provides the Accessory subject to the rules and policies of your correctional facility. You may only own one of each Accessory available.

Accessories must be used in compliance with all applicable laws, rules and regulations. Use of the Accessory is a privilege and misuse may lead to denial of this privilege, confiscation of the Accessory, administrative and disciplinary sanctions, and/or legal action.

JPay will ship Accessories to the correctional facility at which you resided at the time of purchase within fifteen (15) business days from the date of purchase. Depending on your facility's own procedures, it may take additional time for the correctional facility staff to deliver the Accessory to you. JPay is not responsible for delays in delivery due to the actions or decisions of the correctional facility or events beyond JPay's control, including shortage of materials, labor strikes, transportation failure, lockdown, facility disruption, inclement weather, or acts of God.

**6. ACCESSORY LIMITED WARRANTY.** JPay warrants that the Accessory will be free from material defects in design and manufacture and will substantially conform to the published specifications under normal use for a period of sixty (60) days following the date the Accessory was purchased. This

warranty is provided to you and is not transferable. The warranty is void if the product is not used in accordance with the product instructions, or if it is damaged as a result of misuse, unauthorized repair, modification, or accident. This sixty (60)-day warranty period applies only to Accessories purchased separately from any Player.

To obtain warranty service, you must submit a Trouble Ticket to the JPay Help Desk within the sixty (60)-day warranty period. JPay will attempt to troubleshoot the issue. If further assistance is needed, JPay will repair or replace the product or any portion thereof with a new or refurbished product of equal or greater capacity and functionality. A replacement Accessory assumes (i) the remaining warranty time available on the original Accessory (which is calculated from the date that you first submit a Trouble Ticket), or (ii) a warranty period of thirty (30) days following the date the replacement Accessory is delivered to the facility in which you reside, whichever date is later.

JPay will ship replacement Accessories to the correctional facility at which you resided at the time the replacement was requested within fifteen (15) business days from JPay's approval of the replacement. Depending on your facility's own procedures, it may take additional time for the correctional facility staff to deliver the replacement Accessory to you. JPay is not responsible for delays in delivery due to the actions or decisions of the correctional facility or events beyond JPay's control, including shortage of materials, labor strikes, transportation failure, lockdown, facility disruption, inclement weather, or acts of God.

JPay is not responsible for damage arising from failure to follow instructions relating to the product's use. This warranty does not apply: (a) to cosmetic damage, including but not limited to, scratches and dents; (b) to damage caused by accident, abuse, misuse, liquid spill or submersion, flood, fire, earthquake or other external causes; (c) to damage caused by service performed by anyone who is not a representative of JPay; or (d) to an Accessory that has been confiscated by correctional staff.

Notwithstanding the foregoing, JPay provides the Accessory subject to the rules and policies of each applicable correctional facility.

THE FOREGOING IS JPAY'S SOLE WARRANTY. JPAY DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. JPAY IS NOT LIABLE OR RESPONSIBLE FOR ANY AMOUNT OF DAMAGES ABOVE THE AGGREGATE DOLLAR AMOUNT PAID BY YOU FOR THE PURCHASE OF THE PLAYER AND/OR ACCESSORY. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

THE KIOSK, PLAYER, CONTENT, AND SERVICES ARE PROVIDED BY JPAY INC. ON AN "AS IS" AND "AS AVAILABLE" BASIS. JPAY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE KIOSK, PLAYER, OR SERVICES. YOU EXPRESSLY AGREE THAT YOUR USE OF THE KIOSK, PLAYER, AND SERVICES IS AT YOUR SOLE RISK.

TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, JPAY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. JPAY (AS WELL AS ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AND STOCKHOLDERS) WILL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM THE USE OF

THE KIOSK, A PLAYER, AN ACCESSORY AND / OR THE SERVICES, ANY NON-TRANSMITTAL OF A COMMUNICATION, OR FOR DELAY OR ERRONEOUS DELIVERY OF A COMMUNICATION, REGARDLESS OF THE CAUSE, INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, AND CONSEQUENTIAL DAMAGES.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

7. **GOVERNING LAW.** This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Florida, exclusive of conflict or choice of law rules.

8. **DISPUTE RESOLUTION.**

**THIS AGREEMENT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS.**

About Arbitration:

In the event JPay is unable to resolve a complaint you may have to your satisfaction (or if JPay has not been able to resolve a dispute it has with you after attempting to do so), we each agree to resolve those disputes through binding arbitration instead of in court. Arbitration is more informal than a lawsuit in court. Arbitration uses neutral arbitrators instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. **Any arbitration under this Agreement will take place on an individual basis; class arbitrations and in court class actions are not permitted.**

Arbitration Agreement:

a) Any dispute, claim or controversy among the parties arising out of or relating to this Agreement ("Dispute") shall be finally resolved by and through binding arbitration administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules (the "JAMS Rules"), provided that failure to adhere to any of the time limits set forth therein shall not be a basis for challenging the award.

You may obtain copies of the current rules and forms and instructions for initiating arbitration by contacting JAMS in any of the following ways:

By mail:

JAMS, The Resolution Experts  
600 Brickell Avenue, Suite 2600  
Miami, FL 33131  
Web site: [www.jamsadr.com](http://www.jamsadr.com)  
Telephone (949) 224-1810 or (800) 352-5267

Online:

Web site: [www.jamsadr.com](http://www.jamsadr.com)

By telephone:

(949) 224-1810 or (800) 352-5267

**You agree that, by entering into this Agreement, you and JPay are each waiving the right to a trial by jury or to participate in a class action or class arbitration.** Both the foregoing agreement of the parties to arbitrate any and all Disputes, and the results, determinations, findings, judgments and/or awards rendered through any such arbitration, shall be final and binding on the parties and may be specifically enforced by legal proceedings in any court of competent jurisdiction.

b) The arbitration shall be conducted by three (3) arbitrators (unless the parties mutually agree to less). Each party shall select one arbitrator within thirty (30) days of commencement of the arbitration, failing which, upon request of any party, JAMS shall appoint such arbitrator. The third arbitrator, who shall serve as Chairperson of the arbitral panel, shall be appointed by JAMS pursuant to Rule 15 of the JAMS Rules. The arbitrators must apply the terms of this arbitration agreement, including without limitation, the waiver of class-wide arbitration set forth below.

c) The place of arbitration shall be Miami, Florida (provisions will be made for telephonic appearances if necessary or required). If arbitration in Miami, Florida is contrary to law, the arbitration shall be conducted in the city of your incarceration.

d) The cost of the arbitration proceeding, including, without limitation, each party's attorneys' fees and costs, shall be borne by the unsuccessful party or, at the discretion of the arbitrators, may be prorated between the parties in such proportion as the arbitrators determine to be equitable and shall be awarded as part of the award.

e) The arbitration provisions set forth herein, and any arbitration conducted thereunder, shall be governed exclusively by the Federal Arbitration Act, Title 9 United States Code, to the exclusion of any state or municipal law of arbitration.

f) **RESTRICTIONS ON ARBITRATION: ALL DISPUTES, REGARDLESS OF THE DATE OF ACCRUAL OF SUCH DISPUTE, SHALL BE ARBITRATED ON AN INDIVIDUAL BASIS. YOU ARE WAIVING YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT, AND TO CERTAIN DISCOVERY AND OTHER PROCEDURES THAT ARE AVAILABLE IN A LAWSUIT. FURTHER, YOU ARE WAIVING, AND WILL NOT HAVE, THE RIGHT TO CONSOLIDATION OR JOINDER OF INDIVIDUAL DISPUTES OR ARBITRATIONS, TO HAVE ANY DISPUTE ARBITRATED ON A CLASS ACTION BASIS, OR TO PARTICIPATE IN A REPRESENTATIVE CAPACITY OR AS A**

MEMBER OF ANY CLASS PERTAINING TO ANY CLAIM SUBJECT TO ARBITRATION. FURTHER, YOU AND JPAY AGREE THAT THE ARBITRATORS HAVE NO AUTHORITY TO ORDER CONSOLIDATION OR CLASS ARBITRATION OR TO CONDUCT ANY FORM OF REPRESENTATIVE OR CLASS-WIDE ARBITRATION PROCEEDINGS, AND ARE ONLY AUTHORIZED TO RESOLVE THE INDIVIDUAL DISPUTES BETWEEN YOU AND JPAY ALONE.

g) THE SCOPE, VALIDITY, EFFECT, AND ENFORCEABILITY OF THE FOREGOING WAIVER OF CLASS ACTION LAWSUIT AND REPRESENTATIVE OR CLASS-WIDE ARBITRATION ARE TO BE DETERMINED SOLELY AND EXCLUSIVELY BY THE FEDERAL DISTRICT COURT LOCATED IN THE SOUTHERN DISTRICT OF FLORIDA OR FLORIDA STATE COURT IN MIAMI-DADE COUNTY AND NOT BY JAMS OR ANY ARBITRATOR. IF A LAWSUIT IS FILED TO ENFORCE THESE WAIVERS THE PARTIES AGREE THAT THE ARBITRATION SHALL BE IMMEDIATELY STAYED, BY AGREEMENT OR COURT ORDER, UNTIL THE COURT CASE IS RESOLVED AND ALL APPELLATE REVIEW IS EXHAUSTED. THE COST OF PROCEEDINGS UNDER THIS SECTION, INCLUDING, WITHOUT LIMITATION, EACH PARTY'S ATTORNEYS' FEES AND COSTS, SHALL BE BORNE BY THE UNSUCCESSFUL PARTY.

h) WITHOUT WAIVING THE RIGHT TO APPEAL SUCH DECISION, SHOULD ANY PORTION OF SECTION (8)(f) BE STRICKEN FROM THIS AGREEMENT OR DEEMED OTHERWISE INVALID OR UNENFORCEABLE, THEN THIS ENTIRE SECTION 8 (OTHER THAN THIS SENTENCE) SHALL BE STRICKEN FROM THIS AGREEMENT AND INAPPLICABLE, AND ANY AND ALL DISPUTES SHALL PROCEED IN FEDERAL DISTRICT COURT LOCATED IN THE SOUTHERN DISTRICT OF FLORIDA OR FLORIDA STATE COURT IN MIAMI-DADE COUNTY AND BE DECIDED BY A JUDGE, SITTING WITHOUT A JURY, ACCORDING TO APPLICABLE COURT RULES AND PROCEDURES, AND NOT AS A CLASS ACTION LAWSUIT.

9. **TIME LIMIT FOR FILING CLAIMS.** As a condition precedent to recovery, all claims under this Agreement (other than warranty claims which are subject to the time limits set forth in Sections 4 and 6) must be filed in writing or electronically with JPay within six (6) months of your constructive knowledge that the alleged issue occurred.

Further, any demand for arbitration must be filed no later than one (1) year after your constructive knowledge that the alleged issue occurred.

Where claims are not filed or arbitration is not instituted thereon in accordance with the foregoing provisions, such claims shall be deemed waived and will not be paid.

10. **INDEMNIFICATION.** To the maximum extent permitted by law, you agree to defend, indemnify and hold harmless JPay, its affiliates and their respective directors, officers, employees and agents from and against any and all third party claims, actions, suits or proceedings, as well as any and all losses, liabilities, damages, costs and expenses (including reasonable attorney's fees) arising out of or accruing from (a) your breach of this Agreement, and (b) your use of the Services.

11. **SEVERABILITY.** If any provision of the Agreement shall be ruled unenforceable, then the remainder shall be enforced to the extent permissible.

12. **ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement with respect to the subject matter hereof. The Agreement may not be altered, supplemented, or amended by the use of any other document(s). Notwithstanding the foregoing, the rules and policies of the applicable correctional facility may also govern the sale and use of the Player.

# Exhibit C

## TERMS OF SERVICE AND WARRANTY POLICY

**BEFORE YOU USE THE JPAY KIOSK OR YOUR JPAY PLAYER AND THE SERVICES PROVIDED THEREUNDER, YOU MUST READ AND AGREE TO THESE TERMS OF SERVICE AND WARRANTY POLICY (THE “AGREEMENT”). WE MAY AMEND THIS AGREEMENT AT ANY TIME. YOU AGREE TO BE BOUND BY THE CHANGED TERMS AND CONDITIONS OF THIS AGREEMENT UPON YOUR ACCEPTANCE. ANY RIGHTS NOT EXPRESSLY GRANTED HEREIN ARE RESERVED BY JPAY. IF YOU CANNOT READ OR UNDERSTAND THESE TERMS OF SERVICE AND WARRANTY POLICY, PLEASE CONTACT CORRECTIONAL STAFF FOR FURTHER EXPLANATION AND CLARIFICATION.**

**BY CLICKING THE “I AGREE” BUTTON, YOU ARE INDICATING THAT YOU CONSENT TO THIS AGREEMENT.**

- 1. USE OF THE KIOSK, YOUR JPAY PLAYER AND RELATED SERVICES.** Your use of the JPay Kiosk (“Kiosk”) is a privilege. Misusing or damaging the Kiosk may lead to denial of this privilege, administrative and disciplinary sanctions, and/or legal action against you.

These terms of service and warranty policy apply to all services you may access through the Kiosk or your JP3, JP4, JP5, JP5S, or JP5 Mini Player (each of which shall be referred to as a “Player”). These services include, but are not limited to, stamp purchases, email, VideoGrams, eCards, video visitation, phone account funding, music, games, video content, news, audio and eBooks, educational materials, and/or Player and Player accessory purchases (each a “Service” and collectively, the “Services”). Each correctional facility will determine which Services will be made available to you, in addition to the procedures and guidelines that govern the use of the Services.

You are permitted to use only those Services that you are authorized to use under the jurisdictional administrative regulations applicable to you. ALL EMAIL AND OTHER CORRESPONDENCE AND COMMUNICATIONS BETWEEN YOU AND OTHERS IN CONNECTION WITH YOUR USE OF THE SERVICES ARE SUBJECT TO MONITORING, RECORDING, INTERCEPTION AND DISCLOSURE, AND ARE NOT PROTECTED BY ATTORNEY-CLIENT PRIVILEGE. If a correctional facility decides to censor an email, or if you decide to delete an email, any attachments to that email will also be removed from your account. Each email communication you send is subject to a character limit, and the number of emails which may be stored in your inbox is limited as well. Please check the Frequently Asked Questions (“FAQs”) for these limits applicable at your facility.

- 2. FEES AND REFUNDS.** Fees charged to you for certain of the Services may include the suggested retail price for the Service, as well as additional fees to cover infrastructure and network costs incurred by JPay in connection with the provision of these Services. You may also be charged sales tax where required. Depending on your facility’s administrative regulations, refunds or credits may be provided to you for certain of the Services, as described below. You will not, however, be entitled to a refund due to your inability to access any of the Services as a result of any downtime experienced by the Kiosks, your Player, or any of the specific Services.

The transfer of funds to your JPay Media Account is a non-refundable transaction, and funds in such Media Account are not transferable. JPay may make a deduction from your Media Account because of a dispute, legal process, reversed deposit, fees, a correction to your account, or other similar reasons. If such a deduction is necessary, notification will be provided to you. The availability and prices for the Services are subject to change without notice.

If the facility in which you reside permits stamp purchases from your trust and / or JPay Media Accounts, such purchases may not be canceled, are non-refundable and any unused stamps will not be refunded. If the facility in which you reside permits debit phone time account funding from your trust account, such purchases may also not be canceled and are non-refundable.

3. **JPAY PLAYERS AND CONTENT.** All Player purchases are non-refundable. By purchasing a Player, you agree to the Player's Limited Warranty listed in the following section as well as the Kiosk's Frequently Asked Questions. If you have an issue with your Player during the warranty period, you must submit a trouble ticket to the JPay Help Desk on the Kiosk.

The Player will ship to the correctional facility at which you reside at the time of purchase within forty-five (45) business days from the date of purchase. Depending on your facility's own procedures, it may take additional time for the correctional facility staff to deliver the Player to you. JPay is not responsible for delays in delivery due to the actions or decisions of the correctional facility or events beyond JPay's control, including shortage of materials, labor strikes, transportation failure, lockdown, facility disruption, inclement weather or acts of God.

As used in this Agreement, "Content" includes content and components thereof purchased from JPay, including games, music, news, software, technology, text, books, sound, graphics, pictures, video, code, and all audiovisual or other material appearing on or transmitted to and/or from the Kiosk and/or Player. JPay does not guarantee the accuracy or reliability of the Content or that it is error-free. You understand that you may be exposed to Content that may be deemed offensive, indecent, or objectionable. You agree to use the Content at your sole risk and that JPay will have no liability to you for Content found to be offensive, indecent, or objectionable.

JPay may change Content options without notice. The download time or functionality of any of our Services may vary depending on the network and connectivity at your facility. On occasion, purchased Content may become unavailable prior to download and previously purchased and downloaded Content may be removed from your Player while you are a resident at the correctional facility. In such cases, JPay will issue you a credit, which may be used for a future purchase while you are a resident at a correctional facility in the state agency from which you purchased the Content. If JPay provides you with a replacement Player pursuant to the terms of the warranty or if you or a friend or family member purchase a new Player, previously downloaded news Content will not be accessible on the new Player.

The Content is provided for your personal, non-commercial entertainment use. During your incarceration, you may only access and view the Content and/or Services while you are a resident at a correctional facility in the state agency where you purchased such Content and/or Services.

All Content embodies the intellectual property of a third party and is protected by law. You agree not to modify, or attempt to modify, any Content for any reason whatsoever, unless expressly authorized or stated within the applicable legal notices. Content and all other intellectual property rights in or to the Content are owned by JPay or JPay's third party licensors and is protected by United States and international copyright, trade dress, patent, and trademark laws, international conventions, and other laws protecting intellectual property and related proprietary rights. In addition, unless expressly authorized by JPay or stated in the applicable legal notices, you shall not distribute, publicly perform or display, lease, sell, transmit, transfer, publish, edit, copy, create derivative works from, rent, sub-license, decompile, disassemble, reverse engineer, or otherwise make unauthorized use of the Content.

### ***After Your Release***

After your release from the correctional facility, you may have the security features removed from your Player ("unlocked") so that certain Content may be accessible to you outside of the correctional facility. This only applies to Players that were purchased by you or a friend or family member.

To have your Player unlocked, you must mail in the Player and include the following in the package:

- Player
- Your Inmate ID #
- Telephone Number
- Return Mailing Address

Please mail the Player package to:

JPay Inc.

ATTN: Inventory Department

12034 Miramar Parkway

Miramar, FL 33025

Upon receipt of the Player by JPay, if JPay determines the Player is functioning, games and music purchases downloaded on the device and music in your library at the time of your release will be made accessible to you through your unlocked Player. JPay will mail to you the unlocked Player containing those games and music and, if necessary, a USB drive containing music in your library. Any saved emails and their attachments as well as VideoGrams will not be made available to you upon your release.

If JPay determines that the Player is not functioning, JPay will return to you the non-functioning Player along with a USB drive containing your music purchases only. Games and any saved emails and their attachments will not be included with the USB contents.

Please allow up to forty-five (45) business days for delivery of the unlocked Player or USB drive. After forty-five (45) business days, you may follow up on the status of your unlocked Player or USB drive by contacting JPay via email at [tabletunlocksupport@jpay.com](mailto:tabletunlocksupport@jpay.com).

***Movies, Television Shows, and Other Video Rentals***

In certain correctional facilities, JPay may make available for rental and viewing a selection of full-length movies, episodes of television shows, and other videos (collectively hereafter referred to as "Video Content"). This Video Content is available for a limited viewing period only and is not a permanent download. Beginning when you first rent the Video Content, it will be available on your Player for a period of thirty (30) days (the "rental period"). After the rental period ends, the Video Content will delete from your Player, whether or not you have viewed the Video Content. If you wish to view the Video Content after the rental period ends, you must rent it again. Within the thirty (30)-day rental period, when playback of the Video Content first begins you will have forty-eight (48) hours to view the content, after which the Video Content will delete from your Player. In this case, the Video Content will be listed as "Expired" with the option to rent it again (if it is still available for rent). Note that if you begin watching the Video Content on the last day of the thirty (30)-day rental period, you will only have until midnight that day to finish viewing, not the full forty-eight (48) hours.

This Video Content service is only available in the correctional facilities. Once you are released, JPay will no longer provide the rental service to you, even if you retain ownership of your Player.

**4. PLAYER LIMITED WARRANTY.** JPay warrants that the Player will be free from material defects in design and manufacture and will substantially conform to the published specifications under normal use for a period of ninety (90) days following the date on which you first connect the Player to the Kiosk. In certain States, the warranty period may be longer. Please check the Frequently Asked Questions ("FAQs") to know the warranty period that applies to your correctional institution. This warranty is provided to you and is not transferable. The warranty is void if the product is not used in accordance with the product instructions, or if it is damaged as a result of misuse, unauthorized repair, modification or accident. JPay shall not be liable if a certain component, accessory, or feature is not available on the Player due to restrictions imposed by the applicable correctional facility.

To obtain warranty service, you must submit a Trouble Ticket to the JPay Help Desk on the Kiosk. JPay will attempt to troubleshoot the issue. If further assistance is needed, JPay will repair or replace the product or any portion thereof with a new or refurbished product of equal or greater capacity and functionality. A replacement Player assumes (i) the remaining warranty time available on the original Player (which is calculated from the date that you first submit a Trouble Ticket), or (ii) a warranty period of thirty (30) days following the date the replacement Player is delivered to the facility in which you reside, whichever date is later.

JPay will repair or replace any defective earbud headphones (that accompanied your Player) if you submit a Trouble Ticket within two (2) weeks of your receipt of the earbud headphones. If you are a resident of a correctional facility in the State of Idaho, however, you will have thirty (30) days to submit the Trouble Ticket regarding the defective earbud headphones.

If JPay determines that you qualify for a replacement Player or earbud headphones under our Return Merchandise Authorization (RMA) process, JPay will ship the replacement product to the correctional facility at which you reside within forty-five (45) business days from the date the Trouble Ticket

generating the RMA was submitted. Depending on your facility's own procedures, it may take additional time for the correctional facility staff to deliver the Player to you. JPay will not be responsible for delays in delivery due to the actions or decisions of the correctional facility or events beyond JPay's control, including shortage of materials, labor strikes, transportation failure, lockdown, facility disruption, inclement weather or acts of God.

JPay does not warrant, and shall not be responsible for, any lost Content or data contained in the Player regardless of the cause of the loss. JPay's products are not warranted to operate without failure. This warranty gives you specific legal rights, and you may also have other rights which vary by jurisdiction.

JPay is not responsible for damage to the Player arising from failure to follow instructions relating to the Player's use. This warranty does not apply to: (a) cosmetic damage, including but not limited to, scratches and dents; (b) damage caused by accident, abuse, misuse, liquid spill or submersion, flood, fire, earthquake, or other external causes; (c) damage caused by service on the Player performed by anyone who is not a JPay representative; (d) a Player that has been modified; or (e) a Player confiscated by correctional staff.

**5. PLAYER ACCESSORIES.** If the correctional facility in which you reside permits the purchase of accessories, including but not limited to, USB cables, barrel chargers, headphones and/or armbands (each an "Accessory" and collectively, the "Accessories"), such purchases are non-refundable. By purchasing an Accessory, you agree to the Accessory's Warranty listed in the following section as well as the Kiosk's Frequently Asked Questions. If you have an issue with your Accessory during the warranty period, you must submit a trouble ticket to the JPay Help Desk.

JPay will not be liable for any loss, destruction or damage to the Accessory. JPay provides the Accessory subject to the rules and policies of your correctional facility. You may only own one of each Accessory available.

Accessories must be used in compliance with all applicable laws, rules and regulations. Use of the Accessory is a privilege and misuse may lead to denial of this privilege, confiscation of the Accessory, administrative and disciplinary sanctions, and/or legal action.

JPay will ship Accessories to the correctional facility at which you resided at the time of purchase within fifteen (15) business days from the date of purchase. Depending on your facility's own procedures, it may take additional time for the correctional facility staff to deliver the Accessory to you. JPay is not responsible for delays in delivery due to the actions or decisions of the correctional facility or events beyond JPay's control, including shortage of materials, labor strikes, transportation failure, lockdown, facility disruption, inclement weather, or acts of God.

**6. ACCESSORY LIMITED WARRANTY.** JPay warrants that the Accessory will be free from material defects in design and manufacture and will substantially conform to the published specifications under normal use for a period of sixty (60) days following the date the Accessory was purchased. This warranty is provided to you and is not transferable. The warranty is void if the product is not used in

accordance with the product instructions, or if it is damaged as a result of misuse, unauthorized repair, modification, or accident. This sixty (60)-day warranty period applies only to Accessories purchased separately from any Player.

To obtain warranty service, you must submit a Trouble Ticket to the JPay Help Desk within the sixty (60)-day warranty period. JPay will attempt to troubleshoot the issue. If further assistance is needed, JPay will repair or replace the product or any portion thereof with a new or refurbished product of equal or greater capacity and functionality. A replacement Accessory assumes (i) the remaining warranty time available on the original Accessory (which is calculated from the date that you first submit a Trouble Ticket), or (ii) a warranty period of thirty (30) days following the date the replacement Accessory is delivered to the facility in which you reside, whichever date is later.

JPay will ship replacement Accessories to the correctional facility at which you resided at the time the replacement was requested within fifteen (15) business days from JPay's approval of the replacement. Depending on your facility's own procedures, it may take additional time for the correctional facility staff to deliver the replacement Accessory to you. JPay is not responsible for delays in delivery due to the actions or decisions of the correctional facility or events beyond JPay's control, including shortage of materials, labor strikes, transportation failure, lockdown, facility disruption, inclement weather, or acts of God.

JPay is not responsible for damage arising from failure to follow instructions relating to the product's use. This warranty does not apply: (a) to cosmetic damage, including but not limited to, scratches and dents; (b) to damage caused by accident, abuse, misuse, liquid spill or submersion, flood, fire, earthquake or other external causes; (c) to damage caused by service performed by anyone who is not a representative of JPay; or (d) to an Accessory that has been confiscated by correctional staff.

Notwithstanding the foregoing, JPay provides the Accessory subject to the rules and policies of each applicable correctional facility.

THE FOREGOING IS JPAY'S SOLE WARRANTY. JPAY DISCLAIMS ALL OTHER EXPRESS AND IMPLIED WARRANTIES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. JPAY IS NOT LIABLE OR RESPONSIBLE FOR ANY AMOUNT OF DAMAGES ABOVE THE AGGREGATE DOLLAR AMOUNT PAID BY YOU FOR THE PURCHASE OF THE PLAYER AND/OR ACCESSORY. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

THE KIOSK, PLAYER, CONTENT, AND SERVICES ARE PROVIDED BY JPAY INC. ON AN "AS IS" AND "AS AVAILABLE" BASIS. JPAY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE KIOSK, PLAYER, OR SERVICES. YOU EXPRESSLY AGREE THAT YOUR USE OF THE KIOSK, PLAYER, AND SERVICES IS AT YOUR SOLE RISK.

TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, JPAY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. JPAY (AS WELL AS ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES, AND STOCKHOLDERS) WILL NOT BE LIABLE FOR ANY DAMAGES OF ANY KIND ARISING FROM THE USE OF THE KIOSK, A PLAYER, AN ACCESSORY AND / OR THE SERVICES, ANY NON-TRANSMITTAL OF A

COMMUNICATION, OR FOR DELAY OR ERRONEOUS DELIVERY OF A COMMUNICATION, REGARDLESS OF THE CAUSE, INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL, PUNITIVE, AND CONSEQUENTIAL DAMAGES.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS, EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

7. **GOVERNING LAW.** This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Florida, exclusive of conflict or choice of law rules.

8. **DISPUTE RESOLUTION.**

**THIS AGREEMENT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS.**

About Arbitration:

In the event JPay is unable to resolve a complaint you may have to your satisfaction (or if JPay has not been able to resolve a dispute it has with you after attempting to do so), we each agree to resolve those disputes through binding arbitration instead of in court. Arbitration is more informal than a lawsuit in court. Arbitration uses neutral arbitrators instead of a judge or jury, allows for more limited discovery than in court, and is subject to very limited review by courts. **Any arbitration under this Agreement will take place on an individual basis; class arbitrations and in court class actions are not permitted.**

Arbitration Agreement:

a) Any dispute, claim or controversy among the parties arising out of or relating to this Agreement ("Dispute") shall be finally resolved by and through binding arbitration administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures and in accordance with the Expedited Procedures in those Rules (the "JAMS Rules"), provided that failure to adhere to any of the time limits set forth therein shall not be a basis for challenging the award.

You may obtain copies of the current rules and forms and instructions for initiating arbitration by contacting JAMS in any of the following ways:

By mail:

JAMS, The Resolution Experts  
600 Brickell Avenue  
Suite 2600  
Miami, FL 33131

Online:

Web site: [www.jamsadr.com](http://www.jamsadr.com)

By telephone:

1 (800) 352-5267

**You agree that, by entering into this Agreement, you and JPay are each waiving the right to a trial by jury or to participate in a class action or class arbitration.** Both the foregoing agreement of the parties to arbitrate any and all Disputes, and the results, determinations, findings, judgments and/or awards rendered through any such arbitration, shall be final and binding on the parties and may be specifically enforced by legal proceedings in any court of competent jurisdiction.

b) The arbitration shall be conducted by three (3) arbitrators (unless the parties mutually agree to less). Each party shall select one arbitrator within thirty (30) days of commencement of the arbitration, failing which, upon request of any party, JAMS shall appoint such arbitrator. The third arbitrator, who shall serve as Chairperson of the arbitral panel, shall be appointed by JAMS pursuant to Rule 15 of the JAMS Rules. The arbitrators must apply the terms of this arbitration agreement, including without limitation, the waiver of class-wide arbitration set forth below.

c) The place of arbitration shall be Miami, Florida (provisions will be made for telephonic appearances if necessary or required). If arbitration in Miami, Florida is contrary to law, the arbitration shall be conducted in the city of your incarceration.

d) The cost of the arbitration proceeding, including, without limitation, each party's attorneys' fees and costs, shall be borne by the unsuccessful party or, at the discretion of the arbitrators, may be prorated between the parties in such proportion as the arbitrators determine to be equitable and shall be awarded as part of the award.

e) The arbitration provisions set forth herein, and any arbitration conducted thereunder, shall be governed exclusively by the Federal Arbitration Act, Title 9 United States Code, to the exclusion of any state or municipal law of arbitration.

f) RESTRICTIONS ON ARBITRATION: ALL DISPUTES, REGARDLESS OF THE DATE OF ACCRUAL OF SUCH DISPUTE, SHALL BE ARBITRATED ON AN INDIVIDUAL BASIS. YOU ARE WAIVING YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT, AND TO CERTAIN DISCOVERY AND OTHER PROCEDURES THAT ARE AVAILABLE IN A LAWSUIT. FURTHER, YOU ARE WAIVING, AND WILL NOT HAVE, THE RIGHT TO CONSOLIDATION OR JOINDER OF INDIVIDUAL DISPUTES OR ARBITRATIONS, TO HAVE ANY DISPUTE ARBITRATED ON A CLASS ACTION BASIS, OR TO PARTICIPATE IN A REPRESENTATIVE CAPACITY OR AS A MEMBER OF ANY CLASS PERTAINING TO ANY CLAIM SUBJECT TO ARBITRATION. FURTHER, YOU AND JPAY AGREE THAT THE ARBITRATORS HAVE NO AUTHORITY TO ORDER CONSOLIDATION OR CLASS

ARBITRATION OR TO CONDUCT ANY FORM OF REPRESENTATIVE OR CLASS-WIDE ARBITRATION PROCEEDINGS, AND ARE ONLY AUTHORIZED TO RESOLVE THE INDIVIDUAL DISPUTES BETWEEN YOU AND JPAY ALONE.

g) THE SCOPE, VALIDITY, EFFECT, AND ENFORCEABILITY OF THE FOREGOING WAIVER OF CLASS ACTION LAWSUIT AND REPRESENTATIVE OR CLASS-WIDE ARBITRATION ARE TO BE DETERMINED SOLELY AND EXCLUSIVELY BY THE FEDERAL DISTRICT COURT LOCATED IN THE SOUTHERN DISTRICT OF FLORIDA OR FLORIDA STATE COURT IN MIAMI-DADE COUNTY AND NOT BY JAMS OR ANY ARBITRATOR. IF A LAWSUIT IS FILED TO ENFORCE THESE WAIVERS THE PARTIES AGREE THAT THE ARBITRATION SHALL BE IMMEDIATELY STAYED, BY AGREEMENT OR COURT ORDER, UNTIL THE COURT CASE IS RESOLVED AND ALL APPELLATE REVIEW IS EXHAUSTED. THE COST OF PROCEEDINGS UNDER THIS SECTION, INCLUDING, WITHOUT LIMITATION, EACH PARTY'S ATTORNEYS' FEES AND COSTS, SHALL BE BORNE BY THE UNSUCCESSFUL PARTY.

h) WITHOUT WAIVING THE RIGHT TO APPEAL SUCH DECISION, SHOULD ANY PORTION OF SECTION (8)(f) BE STRICKEN FROM THIS AGREEMENT OR DEEMED OTHERWISE INVALID OR UNENFORCEABLE, THEN THIS ENTIRE SECTION 8 (OTHER THAN THIS SENTENCE) SHALL BE STRICKEN FROM THIS AGREEMENT AND INAPPLICABLE, AND ANY AND ALL DISPUTES SHALL PROCEED IN FEDERAL DISTRICT COURT LOCATED IN THE SOUTHERN DISTRICT OF FLORIDA OR FLORIDA STATE COURT IN MIAMI-DADE COUNTY AND BE DECIDED BY A JUDGE, SITTING WITHOUT A JURY, ACCORDING TO APPLICABLE COURT RULES AND PROCEDURES, AND NOT AS A CLASS ACTION LAWSUIT.

9. **TIME LIMIT FOR FILING CLAIMS.** As a condition precedent to recovery, all claims under this Agreement (other than warranty claims which are subject to the time limits set forth in Sections 4 and 6) must be filed in writing or electronically with JPay within six (6) months of your constructive knowledge that the alleged issue occurred.

Further, any demand for arbitration must be filed no later than one (1) year after your constructive knowledge that the alleged issue occurred.

Where claims are not filed or arbitration is not instituted thereon in accordance with the foregoing provisions, such claims shall be deemed waived and will not be paid.

10. **INDEMNIFICATION.** To the maximum extent permitted by law, you agree to defend, indemnify and hold harmless JPay, its affiliates and their respective directors, officers, employees and agents from and against any and all third party claims, actions, suits or proceedings, as well as any and all losses, liabilities, damages, costs and expenses (including reasonable attorney's fees) arising out of or accruing from (a) your breach of this Agreement, and (b) your use of the Services.

11. **SEVERABILITY.** If any provision of the Agreement shall be ruled unenforceable, then the remainder shall be enforced to the extent permissible.

12. **ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement with respect to the subject matter hereof. The Agreement may not be altered, supplemented, or amended by the use of any other document(s). Notwithstanding the foregoing, the rules and policies of the applicable correctional facility may also govern the sale and use of the Player.